

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FARHAD ARSHAD,

Plaintiff,

-vs-

COLUMBIA BASIN COLLEGE, LEE
THORNTON and JANE DOE THORNTON,
husband and wife, RICH CUMMINS
and MEG WOODS, husband and wife,
DEBORAH MEADOWS and JOHN DOE
MEADOWS, wife and husband, CAROL
WALKER and JOHN DOE WALKER, wife
and husband, JERRY DELICH and
JANE DOE DELICH, husband and
wife,

Defendants.

NO. CV-05-5019-LRS

ORDER GRANTING DEFENDANT
COLUMBIA BASIN COLLEGE'S
MOTION FOR SUMMARY JUDGMENT

BEFORE THE COURT is Defendant Columbia Basin College's Motion for Summary Judgment (Ct. Rec. 39) filed on April 19, 2006 and noted for hearing without oral argument on May 22, 2006. Columbia Basin College requests the Court to dismiss Plaintiff Arshad's claims against it and dismiss Columbia Basin College as a party from this suit pursuant to the Eleventh Amendment of the United States Constitution.

DISCUSSION

On February 11, 2005, the Plaintiff filed suit in federal court alleging violations of "Washington's Law Against Discrimination, RCW 49.60 et. seq.; race discrimination, hostile work environment; unlawful

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1 retaliation, intentional infliction of emotional distress" and "42 U.S.C.
2 §1981 and 42 U.S.C. §1983." Ct. Rec. 1, at 5.

3 Defendant Columbia Basin College is an agency of the State of
4 Washington. In its answer, Defendant Columbia Basin College raised the
5 Eleventh Amendment immunity defense. Ct. Rec. 4, at 7. Citing
6 *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 54 (1996), Defendant
7 argues that the Eleventh Amendment prohibits Plaintiff from bringing suit
8 against a State in federal court, except in the case of a recognized
9 exception. Defendant stresses the rationale supporting the Eleventh
10 Amendment is that States are a sovereign entity and as such, must consent
11 to being sued. *Id.* Additionally, citing *Mitchell v. Los Angeles*
12 *Community College District*, 861 F.2d 198, 200-01 (9th Cir.1989), Defendant
13 points out that the Ninth Circuit has determined that the Eleventh
14 Amendment bars 42 U.S.C. §§1981 and 1983 claims against state agencies.

15 Plaintiff responds in opposition to Defendant's motion that the
16 Eleventh Amendment immunity does not apply if a state has consented to
17 suit. Ct. Rec. 43, at 2. Plaintiff claims a state may waive its
18 sovereign immunity and consent to suit under section 1983. Plaintiff
19 asserts Washington State has done so, citing RCW 4.92.090 and RCW
20 4.92.130. Plaintiff further suggests that Washington completely
21 abrogated sovereign immunity some time ago.

22 The undisputed facts indicate that Defendant Columbia Basin College
23 is a community college district created by state statute, RCW 28B.50.040.
24 The Eleventh Amendment bars private parties from suing states in federal
25 court, see *Douglas v. Cal. Dep't of Youth Auth.*, 271 F.3d 812, 817, as
26 amended, 271 F.3d 910 (9th Cir.2001); *Hans v. Louisiana*, 134 U.S. 1, 15,

1 10 S.Ct. 504, 33 L.Ed. 842 (1890); *College Sav. Bank v. Florida Prepaid*
2 *Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 669, 119 S.Ct. 2219, 144
3 L.Ed.2d 605 (1999). There are only three exceptions to this general rule.
4 First, a state may waive its Eleventh Amendment defense. *Clark v.*
5 *Barnard*, 108 U.S. 436, 447-48, 2 S.Ct. 878, 27 L.Ed. 780 (1883). Second,
6 Congress may abrogate the States' sovereign immunity by acting pursuant
7 to a grant of constitutional authority. *Kimel v. Florida Board of*
8 *Regents*, 528 U.S. 62, 80, 120 S.Ct. 631, 145 L.Ed.2d 522 (2000). Third,
9 under the *Ex parte Young* doctrine, the Eleventh Amendment does not bar
10 a "suit against a state official when that suit seeks ... prospective
11 injunctive relief." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 73,
12 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996).

13 The Court finds Defendant Columbia Basin College, as a state agency,
14 is immune from this §1981 and §1983 damage suit in federal court brought
15 by Plaintiff, a private citizen. See *Quern v. Jordan*, 440 U.S. 332, 99
16 S.Ct. 1139, 59 L.Ed.2d 358 (1979) (states are immune from § 1983 damage
17 suits in federal court under the eleventh amendment); *Will v. Michigan*
18 *Dep't of State Police*, 491 U.S. 58, 66 (1989) (section 1983 does not
19 provide a federal forum for litigants who seek a remedy against a state
20 for alleged deprivation of civil liberties). " '[A] federal court's
21 remedial power, consistent with the Eleventh Amendment, is necessarily
22 limited to prospective injunctive relief ... and may not include a
23 retroactive award which requires the payment of funds from the state
24 treasury.' " *Wheaton v. Webb-Petett*, 931 F.2d 613m, 619 (9th Cir.1991)
25 (quoting *Edelman v. Jordan*, 415 U.S. 651, 677 (1974); see also *Blaylock*
26 *v. Schwinden*, 862 F.2d 1352, 1353-54 (9th Cir.1988).

1 It does not appear the state of Washington has waived its Eleventh
2 Amendment immunity or consented to being sued in federal court, and
3 Plaintiff seeks a retroactive award against Columbia Basin College.
4 Accordingly, the Eleventh Amendment bars the instant suit. *See Seminole*
5 *Tribe*, 517 U.S. at 53-54. The Court concludes it lacks subject matter
6 jurisdiction to hear Plaintiff's claims against Defendant Columbia Basin
7 College.

8 **IT IS ORDERED:**

9 1. Defendant Columbia Basin College's Motion for Summary Judgment
10 (Ct. Rec. 39) filed on April 19, 2006 is **GRANTED**. Plaintiff's claims
11 against Defendant Columbia Basin College brought pursuant to 42 U.S.C.
12 § 1981, 42 U.S.C. § 1983 and related provisions of federal law are
13 **DISMISSED with prejudice**. All state claims against Defendant Columbia
14 Basin College are **DISMISSED without prejudice**.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter
16 this Order and shall forward copies to counsel. The Clerk shall enter
17 judgment consistent with this order.

18 DATED this 25th of May, 2006.

19 *s/Lonny R. Suko*

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21 LONNY R. SUKO
22 UNITED STATES DISTRICT JUDGE
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